

AGREEMENT FOR DELIVERY OF RECYCLED WATER

This Agreement for Delivery of Recycled Water ("Agreement") is entered into this _____th day of April, 2012, by and between the COUNTY OF SAN LUIS OBISPO ("COUNTY") and the SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT ("DISTRICT").

WHEREAS, COUNTY is constructing a wastewater collection system and treatment facility (hereafter, the "PROJECT") in the unincorporated community of Los Osos, California, which will produce disinfected tertiary-treated non-potable recycled water ("RECYCLED WATER") that meets or exceeds all standards for the use of non-potable tertiary-treated water for use on and around public elementary and middle schools for irrigation purposes, including, without limitation, those standards set forth in Title 22 of the California Code of Regulations ("TITLE 22");

WHEREAS, a condition of the California Coastal Commission's Coastal Development Permit ("CDP") approving the PROJECT requires the COUNTY to dispose of, or provide to reusers, all RECYCLED WATER, after treatment necessary for the intended use, at locations within the Los Osos Groundwater Basin ("Basin") in a manner consistent with a Los Osos Basin Recycled Water Management Plan to be approved by the Commission;

WHEREAS, the COUNTY intends to dispose of, or provide to reusers, said RECYCLED WATER in a manner that will promote its beneficial reuse in a manner consistent with the CDP, TITLE 22, and any other applicable laws and regulations including, as to the DISTRICT, those laws and regulations for use of tertiary-treated water on and around public elementary and middle schools for irrigation purposes;

WHEREAS, the DISTRICT currently uses potable water pumped from the Basin and delivered by potable water purveyors, to irrigate the lawns and landscaping of its four (4) schools within the Basin, and the DISTRICT is willing to reduce such use of potable water by using the COUNTY's RECYCLED WATER from the PROJECT to irrigate the lawns and landscaping of said DISTRICT properties;

WHEREAS, said DISTRICT properties consist of four (4) parcels owned, operated and managed by the DISTRICT in Los Osos, California, located at 880 Manzanita Drive (SUNNYSIDE ELEMENTARY), 348 Los Osos Valley Road (MONARCH GROVE ELEMENTARY), 1330 9th Street (BAYWOOD ELEMENTARY) and 1555 El Moro (LOS OSOS MIDDLE SCHOOL), and are hereafter collectively referred to herein as the "DISTRICT PROPERTY";

WHEREAS, as part of the PROJECT, the COUNTY will be constructing and maintaining a RECYCLED WATER distribution system in the COUNTY right of way and within other COUNTY property rights; and

WHEREAS, the parties understand that no RECYCLED WATER shall be available for delivery under this Agreement until after the PROJECT is completed and fully operational.

NOW, THEREFORE, it is mutually agreed between the parties hereto, as follows:

1. **DELIVERY OF RECYCLED WATER** - Pursuant to the provisions set forth herein, the COUNTY will deliver to each DISTRICT PROPERTY RECYCLED WATER for irrigation purposes meeting TITLE 22 standards, any standards for use of non-potable tertiary-treated water on and around public elementary and middle schools for irrigation purposes, and any other applicable standards the COUNTY is required to meet under applicable law.
2. **CONSTRUCTION AND MAINTENANCE OF FACILITIES** - Prior to PROJECT completion, the COUNTY will construct and maintain at each DISTRICT PROPERTY one connection point to the COUNTY's RECYCLED WATER distribution system. Each connection location shall be mutually agreed between the parties and should be located at the DISTRICT's property line closest to the COUNTY's RECYCLED WATER distribution system (hereafter, the "point of delivery").
 - 2.1. DISTRICT will maintain all irrigation facilities on DISTRICT PROPERTY, while COUNTY will maintain all facilities offsite of DISTRICT PROPERTY up to, and including, the point of delivery.
 - 2.2. Prior to initial delivery of RECYCLED WATER, COUNTY will pay for actual costs of any relocating, retrofitting or remodeling of any existing facilities at the DISTRICT PROPERTY, up to \$50,000 that are reasonably necessary to accommodate the use of RECYCLED WATER at DISTRICT PROPERTY and mutually agreed upon by the DISTRICT's Superintendent and the COUNTY's Director of Public Works.
 - 2.3. Any facilities constructed after the delivery of RECYCLED WATER shall be relocated, retrofitted, or remodeled at the expense of the DISTRICT.
3. **DELIVERY AND METERING** - RECYCLED WATER will be furnished at the point of delivery at a reasonably constant pressure of at least sixty (60) pounds per square inch ("psi"). If a greater pressure than established in this section is required by DISTRICT, the cost of providing such greater pressure shall be borne by DISTRICT. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of RECYCLED WATER to fight fire, earthquake or other catastrophe shall excuse COUNTY from this provision for such reasonable period of time as may be necessary to restore service.
 - 3.1. COUNTY shall furnish, install, operate, and maintain at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of RECYCLED WATER delivered to DISTRICT. To the extent practical, the meter house or pit and all required devices and equipment shall be constructed so as to not unreasonably interfere with the use of the DISTRICT PROPERTY or the health, safety and welfare of District students. The metering equipment shall be read by the COUNTY at least quarterly for billing purposes. An appropriate official of both

the COUNTY and DISTRICT shall, at all reasonable times, have access to the meter for the purpose of verifying its readings.

- 3.2. If the DISTRICT believes that the amount of RECYCLED WATER in any billing statement it receives from the COUNTY is inaccurate in any way, the DISTRICT shall so notify the COUNTY in writing within one hundred eighty (180) days of the date the billing statement was received by the DISTRICT. Unless the DISTRICT provides such written notification to the COUNTY within one hundred eighty (180) days, the amount of RECYCLED WATER in said billing statement shall be deemed to be an accurate amount that was based upon an accurate meter. The DISTRICT will not be able to claim any adjustments, credits, or offsets to any billing statement unless it provides the COUNTY in writing the reasons why the DISTRICT believes the billing statement is inaccurate within one hundred eighty (180) days of the date the COUNTY first sent the billing statement to the DISTRICT.
- 3.3. Whenever the COUNTY receives a timely written notice from the DISTRICT pursuant to section 3.2 above, the COUNTY shall test and, if necessary, recalibrate the metering equipment. The COUNTY also agrees to test and, if necessary, recalibrate such metering equipment whenever requested by DISTRICT, but not less frequently than once every six (6) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate.
- 3.4. A reading of any meter disclosed by test to be inaccurate shall be corrected and the usage amounts since the last accurate meter reading will be adjusted if warranted. If any meter fails to register for any period, the amount of RECYCLED WATER furnished during such period shall be deemed to be the amount of RECYCLED WATER delivered in the corresponding period immediately prior to the failure, unless COUNTY and DISTRICT agree upon a different amount.
4. **RECYCLED WATER RATES** - At least quarterly, COUNTY shall provide DISTRICT with an itemized billing statement setting forth the amount and cost of RECYCLED WATER furnished to DISTRICT during the preceding three (3) month period.
 - 4.1. DISTRICT shall pay COUNTY, no later than ninety (90) days after receipt of the itemized billing statement, for the delivery and use of RECYCLED WATER.
 - 4.2. The rate charged for RECYCLED WATER shall be based upon a unit of water equal to one hundred (100) cubic feet (or 748 gallons) of water. DISTRICT shall pay COUNTY for the delivery and use of each unit of RECYCLED WATER according to the rate the DISTRICT is paying its potable water purveyor at each DISTRICT PROPERTY, with a discount of ten percent (10%). The following initial rates are fixed for the first five (5) years this Agreement is in effect:

BAYWOOD ELEMENTARY = \$4.28/unit
LOS OSOS MIDDLE SCHOOL = \$4.28/unit
MONARCH GROVE ELEMENTARY = \$3.43/unit
SUNNYSIDE ELEMENTARY = \$3.43/unit

- 4.3. COUNTY reserves the right to increase the rates for RECYCLED WATER once every five (5) years. No increase shall exceed twenty percent (20%) of the price charged for the immediately preceding five (5) year period. RECYCLED WATER rates charged the DISTRICT at each DISTRICT PROPERTY location shall not exceed ninety percent (90%) of the rate the District pays its potable water purveyor at said location. The COUNTY may also at any time reduce the rates charged for RECYCLED WATER.
5. **TERM** - The term of this Agreement shall be for forty (40) years from the date first above written or the duration of the loan term from the United States Department of Agriculture, whichever is greater.
- 5.1. COUNTY and DISTRICT may mutually amend the terms of this Agreement at any time, subject to approval by their respective governing boards.
- 5.2. After the Agreement has been in effect for five (5) years, either party may terminate this Agreement for any reason upon providing six (6) months written notice to the other party.
- 5.3. In the event COUNTY cannot deliver water meeting the quality standards and price structure required by this Agreement to DISTRICT, and the COUNTY has not undertaken concrete steps towards curing such breach within sixty (60) days of receiving written notice thereof from the DISTRICT, DISTRICT at its sole option may terminate this Agreement
- 5.4. DISTRICT may, at a time within its sole discretion, and subject to the legal requirements associated therewith, apply for a permit to drill six (6) water wells into the upper basin aquifer to be used for non-potable irrigation water if COUNTY is unable to deliver recycled water to DISTRICT meeting the quality standards and price structure required by this AGREEMENT. County Public Works Director agrees to support such application, on reasonable terms and conditions.
6. **DISTRICT RIGHTS AND RESPONSIBILITIES** - DISTRICT agrees to abide by all applicable laws governing the DISTRICT's use of the RECYCLED WATER that exist during the term of this Agreement, including but not limited to any applicable orders, rules or regulations of California Regional Water Quality Control Board, California Department of Public Health, the California Coastal Commission, or any other regulatory body regulating the use of RECYCLED WATER within the Basin, including, but not limited to, any orders, rules or regulations adopted by the COUNTY that are consistent with applicable laws.

Nothing in this Agreement validates, invalidates or otherwise affects any rights the DISTRICT may have to (1) drill and operate water wells on DISTRICT PROPERTY; (2) enter into agreement(s) to allow third parties to drill and operate water wells on DISTRICT PROPERTY; or (3) to terminate any agreement(s) allowing a third party to drill and operate water wells on DISTRICT PROPERTY. Similarly, nothing in this

Agreement excuses the DISTRICT or any third party from complying with any applicable laws relating to any such rights, including obtaining any and all required permits and authorizations.

7. **INDEMNITY** – DISTRICT and COUNTY shall each defend, indemnify and hold harmless the other, and its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, and that arise out of any breach of this Agreement by the other party.
8. **COMPLETION OF PROJECT AS CONDITIONED PRECEDENT** – The completion of the PROJECT by the COUNTY is a conditioned precedent to any obligation of the COUNTY or DISTRICT under this Agreement. If PROJECT is not completed within seven (7) years, this Agreement shall be considered null and void.
9. **TRANSFERABILITY** - Any transfer or assignment shall require COUNTY Board of Supervisor approval and may require additional provisions or amendments before being transferred or assigned. Subject to Board approval (which shall not be unreasonably withheld), the DISTRICT may transfer or assign this Agreement to any other entity that operates DISTRICT PROPERTY and, subject to District approval (which shall not be unreasonably withheld) the COUNTY may transfer or assign this Agreement to any agency that operates potable water system in the community of Los Osos.
10. **CORRESPONDENCE** - Any and all correspondence regarding specific requirements of this Agreement or for general communication between COUNTY and DISTRICT shall be mailed to the addresses and individuals below:

County of San Luis Obispo
Attn: Director of Public Works
County Government Center, Room 207
San Luis Obispo, CA 93408

San Luis Coastal Unified School District
Attn: Director of Facilities, Operations & Transportation
1500 Lizzie Street
San Luis Obispo, CA 93401
11. **JURISDICTION AND VENUE** – Any dispute that arises under or relates to this Agreement shall be resolved in the Superior Court of the State of California. In any such litigation, COUNTY and DISTRICT shall each be responsible for its respective attorney's fees and costs.
12. **CONSTRUCTION** - Headings in this Agreement are for convenience only, and shall have no bearing on interpreting the provisions hereof. If any provisions of this Agreement are held by a court to be void or unenforceable, the same shall in no way affect the other provisions of this Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole. It is the parties' intention to comply with all applicable laws and regulations that relate to

the parties obligations under this Agreement, and all such applicable laws and regulations are incorporated herein by reference, and take precedent over any inconsistent language otherwise contained herein. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

13. **LIMITATION OF DAMAGES** – Under no circumstances shall the COUNTY be liable to the DISTRICT for any amounts the DISTRICT has to pay for water (either potable or non-potable) from a source other than the COUNTY that is above the amounts it would have paid the COUNTY under this Agreement. It is the intent of the parties that the COUNTY shall not be liable to the DISTRICT for any additional water charges the DISTRICT pays in the event the COUNTY fails to deliver water to the DISTRICT that meets the requirements of this Agreement. Nothing in this Agreement precludes the DISTRICT from recovering from the COUNTY any other types of damages otherwise legally recoverable incurred by the DISTRICT as a result of any breach of this Agreement by the COUNTY, including but not limited to a failure by the COUNTY to deliver water to the DISTRICT that meets the requirements of this Agreement.

IN WITNESS WHEREOF, COUNTY and DISTRICT have executed this Agreement the date and year first above written.

COUNTY OF SAN LUIS OBISPO

BY: _____ DATED _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

BY: _____ DATED _____
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo
State of California

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN JENSEN, County Counsel

BY: Warren Jensen DATED April 13, 2012
Deputy County Counsel

COUNTY OF SAN LUIS OBISPO PUBLIC WORKS DEPARTMENT

BY: Rocco Dyer DATED 4/12/2012
Director of Public Works

SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT

BY: Eric Prater DATED 4-5-12
Superintendent